

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

RECEIVED

APR 25 1996

In the Matter of)
)
Policy and Rules Concerning)
the Interstate, Interexchange)
Marketplace)
)
Implementation of Section)
254(g) of the Communications)
Act of 1934, as amended)

CC Docket No. 96-61

DOCKET FILE COPY ORIGINAL

COMMENTS OF GENERAL COMMUNICATION, INC.

General Communication, Inc. (GCI) submits these comments in response to the Commission's Notice of Proposed Rulemaking (Notice) (FCC 96-123), released March 25, 1996. The Commission seeks comment on a number of items. Herein, GCI comments on forbearance from tariff filing requirements and bundling of Customer Premises Equipment (CPE). As set forth below, the Commission should require nondominant interexchange carriers to tariff their offerings for residential and small business customers and allow packaging of CPE and interexchange services.

I. MANDATORY FORBEARANCE FROM TARIFF FILING REQUIREMENTS

In its Notice, the Commission tentatively concluded that it is required to forebear from applying Section 203 tariff filing requirements to nondominant interexchange carriers. The Commission further concluded that detariffing should be mandatory, such that carriers would be prohibited from filing

tariffs. Pursuant to the Telecommunications Act of 1996, to forbear from applying Section 203 of the Communications Act, the Commission must determine that:

- (1) the enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
- (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
- (3) forbearance from applying such provision or regulation is consistent with the public interest.¹

GCI does not agree that the Commission should forebear from applying tariff filing requirements for residential and small business services since the standards for forbearance have not been met. For residential and small business customers, continued filing of tariffs is in the public interest and is necessary to ensure that rates are not unduly discriminatory and to protect consumers.

Residential and small business customers differ from large business/commercial accounts in two significant respects. There are a hundreds of millions of residential and small business customers, compared to a relatively smaller number of large business/commercial customers. Further, residential and small business customers are less sophisticated and have less bargaining power, compared to

¹47 U.S.C. 159 - Section 10.

large business/commercial customers. These differences require a difference in the treatment of these customers.

Also, beyond setting rates, one function of tariffs is to establish other terms of the relationship between carriers and customers. Without tariffs, carriers might be expected to have an individual contract with each residential and small business customer. It would be a burden on both carriers and customers to establish such individual contracts. Further, such individual contracts with the multitude of customers would increase the probability of discrimination among customers.

Elimination of tariff filings for residential and small business customers would also reduce the ability of those customers to obtain the most favorable rates and would, thereby, reduce competition. Individual customers generally do not investigate tariffs to determine the lowest rates. However, various organizations analyze tariffs and issue reports and articles to consumers regarding the rates and rate plans offered by various carriers. If tariffs are not filed, these organizations will not have access to the information necessary for such reports and articles.

The Commission stated in the Notice that it believes that mandatory detariffing "will discourage price coordination by eliminating carriers' ability to ascertain their competitor interstate rates and service offerings..." That statement illustrates the problem that consumers will have obtaining

information about tariffs and demonstrates why tariffing should not be eliminated.

Knowledge of rates by competitors may facilitate collusion, but knowledge of rates by customers is necessary for those customers to make appropriate choices. If the Commission does not expect carriers to be able to ascertain competitors' rates, how will consumers ascertain those rates so they can make appropriate competitive choices.

Even without tariffs, carriers are probably in a better position than customers to ascertain their competitors' rates. On a daily basis, the sales and marketing staff of carriers will be trying to learn about the rates of competitors. They will gain such information very shortly after new rates are offered; only consumers will be denied the information. For carriers, there will be little difference between learning about new tariffs a day or two after they are offered, versus learning about them through tariff filings on one days' notice. For consumers, the difference will be enormous and their ability to make competitive choice, without adequate information, will be constrained. Small consumers would not be protected and could not protect themselves.

Further, as discussed in GCI's Comments filed April 19, 1996, filing of tariffs is necessary to enforce the Act's requirements for rate integration. Again, without tariffs customers will have no way of knowing if the requirements of the law are being followed.

As also discussed in GCI's Comments filed April 19, 1996, the Commission cannot rely on the filing of complaints to protect consumers and prevent discrimination. In the first instance, most consumers will not even have sufficient evidence on which to base a complaint; residential consumers simply will not have enough information to know whether rates are discriminatory. Furthermore, complaints at the Commission take an inordinate amount of time to resolve and do not provide real relief to consumers.

For the foregoing reasons, tariff filing requirements for residential and small business customers should continue, and the Commission should not forebear from enforcing tariff filing requirements.

II. BUNDLING OF CUSTOMER PREMISES EQUIPMENT

The Commission tentatively concluded that it should amend its rules to allow interexchange carriers to bundle CPE with interexchange services. The Commission also requested comment whether it should require interexchange carriers offering bundled CPE and interexchange service to also offer separately, unbundled interexchange service.

GCI believes that the rules prohibiting bundling can be relaxed, and carriers should be allowed to offer packages that include CPE and interexchange service. However, both the CPE and the interexchange service should be available separately. The price for the package could be less than the price for the separate components; however, so long as there is any

regulation of interexchange services, the discount should be reflected entirely in the revenue attributed to non-regulated CPE sales, not to the regulated service.

“Bundling,” in its pure form, means that in order to purchase one product the customer must also purchase another product. Bundling, in that sense, should remain prohibited.

However, packaging of services so that consumers can purchase them all, as a group, should not be prohibited so long as each individual component of the package is available individually. Discounts on such packages should also be allowed, such that the price for the package is less than the total price of the individual components. However, to the extent that any elements of the package, such as interexchange service, remains subject to regulation, the discount should be reflected entirely in the revenue for the unregulated service.


Such packaging will promote competition and benefit consumers. Many consumers desire to purchase service in a package. Those consumers should be able to do so, and competitive firms should be allowed to meet the desires of the consumers in the competitive marketplace. However, some consumers may not wish to purchase service as a package. Those consumers should have that option, and sellers should not restrict that option by offering service solely as part of a package. Thus, packaging as proposed above will benefit consumer and promote competition, while protecting against the harms traditionally associated with bundling.

Conclusion

The Commission should require nondominant interexchange carriers to tariff their offerings for residential and small business customers and allow packaging of CPE and interexchange services.

Respectfully submitted,

GENERAL COMMUNICATION, INC.



Kathy L. Shobert
Director, Federal Affairs
901 15th St., NW, Suite 900
Washington, D.C. 20005
(202)842-8847

April 25, 1996

STATEMENT OF VERIFICATION


I have read the foregoing, and to the best of my knowledge, information and belief there is good ground to support it, and that it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed this 25th day of April, 1996.



Kathy L. Shobert
Director, Federal Affairs
901 15th St., NW, Suite 900
Washington, D.C. 20005
(202)842-8847

CERTIFICATE OF SERVICE

I, Kathy L. Shobert, do hereby certify that on this 25th day of April, 1996 a copy of the foregoing was sent by first class mail, postage prepaid, to the parties listed below.


Kathy L. Shobert

Janice Myles
Federal Communications Commission
1919 M St., NW
Room 544
Washington, DC 20554

ITS
2100 M St., NW
Suite 140
Washington, DC 20037